

The Program Fraud Civil Remedies Act

The Program Fraud Civil Remedies Act (PFCRA) of 1986, Public Law 99-509, established a new remedy against false claims or statements made to an agency of the U.S. Government. Prior to this act, judicial or criminal prosecution under the False Claims Act often was not pursued if the amount of the potential recovery was too small to offset the cost of litigation. Under the PFCRA, however, an agency may, with Department of Justice approval, initiate administrative procedures to impose penalties on persons making false claims and statements with a value under \$150,000.

Federal agencies are required to follow certain procedures under the act, and the President's Council on Integrity and Efficiency (PCIE) has drafted model regulations to encourage uniformity in the act's implementation. The regulations by which the Department of State will implement the PFCRA follow the PCIE model with minor variations and are published in the *Federal Register* under 22 CFR Part 35. These regulations establish the Inspector General as the investigating official and the Chief Financial Officer as the reviewing official for PFCRA activities. The Under Secretary for Management is to act as authority head for appeals.

False claims or statements

A *claim* includes any type of request, demand, or submission made to the Department of State for property, services, or money that is actually provided by the U.S. Government. A *statement* includes any representation, certification, or record made with respect to a claim for payment or with respect to eligibility for a contract, grant, bid, loan, or other benefit from the Department of State.

A claim or statement is false if:

- the requesting person (individual or organization) has knowledge that it is false, fictitious, or fraudulent and acts in deliberate ignorance or reckless disregard of its truth or falsity;
- it includes or is supported in writing by a material fact that is false;
- it omits a material fact that the person making the statement has a duty to include; or
- it is for payment of property or services that the person has not actually provided.

Under the PFCRA, any person making a false claim or statement is subject to a civil penalty of not more than \$5,000 for each false claim or statement and may also be required to pay double the amount falsely claimed and collected. No proof of intent to defraud is required for liability.

Procedures

Allegations of PFCRA fraud are handled by the same mechanisms as other significant allegations of fraud, waste, or malfeasance. False claims or statements either by Department of State employees or by outside parties involved in procurement, grants, contracts, or similar activities should be reported to the OIG Hotline. *(See back of pamphlet for Hotline address and telephone number.)*

The investigating official is authorized to subpoena records and documents in the course of the investigation, and the person receiving the subpoena must tender either the documents sought or a certification that they are not available or that they are being withheld upon assertion of an identified privilege. If it is concluded that action under the PFCRA is warranted, the investigating official will submit a report of the investigation to the reviewing official. On determining, based on the report of the investigation, that there is evidence of liability, the reviewing official will transmit to the U.S. Attorney General a written notice of intent to issue a complaint. If the Attorney General concurs, the complaint will be served on the defendant, who then has 30 days to file an answer and request a hearing. If a proper answer cannot be filed in the specified time, a general answer may be filed along with a request for an extension, but failure to answer a complaint will result in maximum penalties without a hearing. A notice of hearing must be served within six years after the date on which the false claim or statement was made.

Hearing, appeal, and collection

An administrative law judge (ALJ), who cannot be an employee or agent of the investigating or reviewing officials, will be appointed as presiding officer for the hearing. The ALJ has the authority to set and change the time and place of the hearing, administer oaths, issue subpoenas, examine witnesses, rule on motions, receive or exclude evidence, and exercise any other authority necessary to conduct the hearing. The ALJ will determine whether the defendant is liable for civil penalty or assessment and the appropriate amount of the penalty, taking into consideration any aggravating or mitigating factors, and will issue an initial decision to that effect. If a defendant found liable for penalty or assessment appeals the decision, the ALJ will forward the record of the proceeding to the Department's authority head, who may affirm, remand, or reverse the decision or reduce or settle a penalty or assessment determined by the ALJ.

An initial decision is automatically stayed pending disposition of an appeal; no administrative stay is available following the final decision of the authority head. Further judicial review of a final decision of the authority head by an appropriate U.S. District Court is authorized.

The U.S. Code authorizes and specifies procedures for collection of civil penalties and assessments imposed under this act. All amounts collected will be deposited in the Treasury of the United States.